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C O N F I D E N T I A L SECTION 01 OF 02 KABUL 000541

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SUBJECT: 2007 AMNESTY BILL EXITS THE TWILIGHT ZONE, DRAWS CONCERN

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Classified By: Acting Deputy Ambassador Joseph A. Mussomeli for reasons 1.4 (b) and (d).

11. (C) Summary: The controversial Amnesty Law, passed by Afghan Parliament in early 2007, resurfaced in late January after three years of uncertain legal status. The law grants "general amnesty" to anyone involved in hostile conflict before the interim administration and to current armed opponents who join the reconciliation process. Civil society is concerned that the law will grant immunity to war criminals and perpetrators of human rights violations from current and past conflicts. However, as these criminals have not been tried by the state in the past, the law changes little. The Embassy plans to augment its support to civil society and political parties holding democratic ideals to help empower them and lend them a more prominent voice. Currently, these groups have little political influence. However, if they eventually gain a stronger voice in Parliament, the law could someday be amended. End Summary.

Amnesty Bill Exits the Twilight Zone a Law

12. (SBU) Since the London Conference, the "National Reconciliation, Amnesty, and National Stability Law" ("Amnesty Law") has attracted renewed attention from Afghan civil society. The bill was passed by Parliament in 2007, but seemed to disappear until a month ago when it was published in the official gazette dated December 3, 2008 (Ref. A). (Note: The Ministry of Justice is frequently slow in printing copies of new laws published in the official gazette, causing considerable lag between the official publication date and the actual publication date.)

13. (SBU) The published Amnesty Law is the same version that the Lower House passed in March 2007 and the Upper House in May 2007, which includes amendments President Karzai made to the original bill (Ref. B). It remains unclear whether Karzai signed the final version of the bill or whether it became law via Article 94 of the Afghan Constitution, which many interpret to provide for automatic passage in the absence of presidential action. While the publication of the law is only now coming to the attention of the public, it appears it has been technically, though not practically, enforceable for nearly three years.

New Law, Old Policy

¶4. (U) The law grants "general amnesty for purpose of reconciliation" to all parties involved in hostile conflict before the establishment of the interim government. It promises the benefits of the law, including freedom from prosecution, to current armed opposition groups and individuals if they join the reconciliation process.

However, the law still permits individual victims or their families to bring cases to trial in accordance with Sharia law. (Comment: Many human rights activists argue that individual victims could not successfully argue their cases in Afghanistan's fragile court system and the ongoing presence of warlords in the Afghan government will prevent individuals from taking their cases to court.)

¶5. (SBU) The law's blanket amnesty may conflict with a number of international treaties to which Afghanistan is a signatory, including the International Bill of Human Rights and the International Treaty on War Crimes and Crimes Against Humanity, Genocide, and Terrorism. The law also contradicts Afghanistan's own Action Plan for Peace, Justice, and Reconciliation (announced by Karzai in December 2006), which states that the Government of Afghanistan "is committed to establishing accountability institutions and to taking the necessary accountability measure in accordance with the nationally and internationally accepted norms on war crimes, crimes against humanity and obvious violations of human rights."

¶6. (C) Considering the current weak state of Afghanistan's judicial system, the Amnesty Law is likely to supersede international treaties and national policies for one key reason: it involves doing nothing. The Afghan government has not prosecuted individuals for committing war crimes in the past, and had no plans to begin trials before the publication of the Amnesty Law. How international treaties and national

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policies will work in concert with the Amnesty Law in the future is uncertain.

Civil Society Outraged at Publication

¶7. (C) Though it is not clear the Amnesty Law will change anything in Afghanistan's legal procedures, Afghan human rights activists are outraged that the law could grant immunity to war criminals and human rights violators. Many Afghan rights activists refer to it as the "Impunity Law." Wazhma Frogh, a human rights activist and winner of the 2009 International Women of Courage Award, said in a February 5 email that the law makes "any claim for transitional justice meaningless." The Afghan Independent Human Rights Commission (AIHRC) told us it suspects the government may have published the law in late 2008 as part of backroom, pre-election deals, and released the official gazette now to coincide with the international community's increasing support for Taliban reconciliation.

¶8. (C) In the days to come, the AIHRC plans to challenge the legality of the law, according to Commissioner Nader Nadery. Nadery told us the AIHRC believes "the constitutionally mandated procedure for a bill to become a law was not respected." (Note: According to Ministry of Justice and Parliament documents, the law went through the entire constitutionally-mandated process to become a law under article 94.) A coalition of Afghan organizations working to advance transitional justice plans to organize public debates on the law and lobby MPs to question the procedural problems that AIHRC believes led to the law's publication. The human rights community will likely use the law to draw attention to transitional justice as discussions of Taliban reconciliation continue.

The Road Out of Warlordism

¶ 9. (C) While the publication of the Amnesty Law changes little in practice, it highlights a long-term concern of the human rights community in Afghanistan. Civil society continues to quietly protest the presence of mujahideen-era warlords in the government. Civil rights activist Orzala Ashraf told us "every time someone sees a diplomat's car in front of Sayyaf's house, it increases his legitimacy." The Amnesty Law, originally promoted by MPs like Mohaqeq and Rabbani, now grants legal immunity to warlords still feared by many Afghans. (Note: Many civil society activists have praised our public statements on Dostum, and question why we do not treat warlords such as Sayyaf, Mohaqeq, and Rabbani similarly.)

¶ 10. (C) The road to revising the law is long but not a dead-end. Though the AIHRC is unlikely to win a court battle over the law's legality, civil society will continue to pursue broader social change that could eventually replace warlords with qualified and committed legislators. The law will not likely be revised while Karzai is in power, since he chooses to lean heavily on the traditional powerbrokers, leaving little room for civil society to truly influence the government. However, civil society activism and political reforms could, in the distant future, lead to a new composition of Parliamentarians who would have the opportunity to amend the law. The Embassy plans to augment its support to civil society and political parties holding democratic beliefs (Ref. C) in an effort to lend them more political influence.

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